

# **BOARD OF PERSONNEL APPEALS**

## **MINUTES – SEPTEMBER 18, 2008 MEETING**

### **PRESENT:**

Jack Holstrom, Presiding Officer  
Steve Johnson  
Jay Reardon  
Alice Whiteman  
Robyn Rowe

### **STAFF ATTENDING:**

Marieke Beck, Board Attorney  
Tonya McCormack  
John Andrew  
Joe Maronick  
Vicki Knudsen  
Paul Melvin  
Raymond Berg

## **BOARD BUSINESS**

### **APPROVAL OF MINUTES:**

Windy Knutson will email the April and July minutes to the Board members. Member Johnson moved to adopt the updated minutes of the April 24, 2008 and July 24, 2008 minutes. Member Whiteman seconded the motion and it passed unanimously.

### **NEXT MEETING DATE:**

The next meeting is set for October 23, 2008, in the second floor west conference room B of the Employment Relations Building, 1805 Prospect Avenue, Helena, Montana. There is an Unfair Labor Practice case on appeal and scheduled for Oral Argument. The pending case needs to have attorney representation until a policy gets in place regarding attorney representation. See below.

### **ATTORNEY COMMENTS:**

The pending ULP that is to come before the Board has an issue regarding representation by non-attorneys. There is no policy in place in regards to representation. There have been no problems when it has been brought before the Board as an informal matter but when it comes to the formal process there is the issue. Presiding Officer Holstrom does not want to put his license to practice law in jeopardy. He does have a call into the John Conner with the Commission of Practice to see if could be allowed. Marieke Beck, Board Attorney stated that they could do a policy and get public comments on making it a policy like what the Board of Labor Appeals has done. Member Reardon moved to have Marieke Beck, Staff Attorney draft a policy for non-attorney representation. Member Johnson seconded the motion and it passed unanimously.

### **MISCELLANEOUS:**

Member Reardon motioned to have three days for case preparation due to the large amount of documentation in the oral argument to be presented. Member Whiteman seconded the motion and it passed unanimously.

Presiding Officer Holstrom welcomed Windy Knutson as the new Board Secretary.

\*\*\*\*\*

## **ORAL ARGUMENT**

### **UNIT DETERMINATION. 2-2007**

#### **MONTANA EDUCATION ASSOCIATION MONTANA – MONTANA FEDERATION OF TEACHERS, NEA AFT, AFL-CIO vs. MONTANA DEPARTMENT OF CORRECTIONS, MONTANA STATE PRISON**

Stephen Bullock, attorney for MEA-MFT, and Denise Pizzini, attorney for Montana Department of Corrections, Montana State Prison, presented oral argument in person. The Board discussed whether the Hearings Officer erred in determining that Case Managers and Sergeants were “supervisory employees” under statute Section 39-31-103(11), MCA.

The Board looked at each position separately. In regards to the Case Managers, authority alone can not make one a supervisory employee. There must be tangible evidence. Member Johnson moved to request the Staff Attorney to clarify the language pertaining to the Case Managers in the Findings of Fact part 13 to state: ‘There must be tangible evidence of use of the exercise of authority.’ Member Rowe seconded the motion and it passed unanimously.

Case Managers only have authority when the Unit Manager and Staff Sergeant are gone. Their positions are to assess treatment for inmates. In discussion, there was a motion made by Member Johnson to have the Staff Attorney do an analysis of substantial evidence and to modify the Findings of Fact from the statement on part 27: ‘that Case Managers have authority at all times’ and replace it with ‘Case Managers have the occasional authority’ and to use it in the following paragraph. Member Rowe seconded the motion and it passed unanimously.

Sergeants were viewed differently by the Board. Member Reardon viewed them as more of a lead person and not authoritative. They had more of a strict routine structure and no incident reports as discipline made it into the employee’s personnel files. Member Johnson viewed them as overseeing the work of correctional officers. They disciplined, assigned work, performed on hiring panels and did incident reports whether informal or formal. Member Whiteman and Member Rowe concurred with Member Johnson.

There was much discussion as to the hiring panel and to define what qualifies and determines one to be supervisory. Sitting on or being a part of the hiring panel does not by itself indicate them being supervisory. The hiring panel is making the recommendation not the individual. Member Johnson motioned that the Board overturns the Hearings Officer’s decision on Case Managers and the Board upholds the other positions enumerated (sergeants). Member Whiteman seconded the motion. Motion passed 3-2, Members Johnson and Whiteman and Chair Holstrom voting aye and Members Reardon and Rowe voting nay.

\*\*\*\*\*